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OFFICE OF PETITIONS

In re Application of
Okuniewicz
Application No. 10/789,325
Filed: February 27, 2004
Attorney Docket No. A9658-81022

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: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3) & (a)(6)
:

This is a decision on the reconsideration petition under 37 CFR 1.78(a)(3), filed October 17, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the concurrently filed amendment. The petition will be treated under 37 CFR 1.78(a)(6), in addition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item (1).

It appears that petitioner has re-submitted the flawed amendment filed on April 28, 2006.

Elaborating on the prior decision:

While the newly added applications state relationships, the previously claimed applications do **not** state relationships. Therefore, the previously claimed applications were never entered into Office databases. As of today, no continuity claims have been entered in records for Application No. 10/789,325. The provisional application was not entered because it was filed more than a year from the filing date of the present application. It could not rely on the filing date of the Application no. 09/834,537 because that application was not properly claimed.

Petitioner must clarify the relationships between Application No. 10/789,325, Application No. 10/388,819, Application No. 09/834,537, and Application No. 60/196,827. It is not sufficient to list their relationships as "related" applications.

The first sentence of the benefit claim lists the applications in backwards order. The most recently filed application in the chain should be listed first and the oldest filed application in the chain should be listed last.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment or an Application Data Sheet (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)) which state the relationships of the prior-filed applications between themselves and the above-identified application are required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3230.

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